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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

# Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 641/2014*, **

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| *Communication submitted by:* | B.N.T.K. (represented by counsel, Mai Greitz) |
| *Alleged victim:* | The complainant |
| *State party:* | Sweden |
| *Date of complaint:* | 1 December 2014 (initial submission) |
| *Date of present decision:* | 9 August 2018 |
| *Subject matter:* | Deportation to Côte d'Ivoire |
| *Procedural issue:* | Level of substantiation of claims |
| *Substantive issues:* | Risk of torture upon return to country of origin; non-refoulement |
| *Article of the Convention:* | 3 |

1.1 The complainant is B.N.T.K.,[1] a national of Côte d'Ivoire born in 1979. His asylum request in Sweden was rejected and he claims that his deportation to Côte d'Ivoire would constitute a violation by Sweden of article 3 of the Convention. The complainant is represented by counsel, Mai Greitz.

1.2 On 4 December 2014, pursuant to rule 114 (1) of its rules of procedure (CAT/C/3/Rev.6), the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Côte d'Ivoire while his complaint was being considered.

## Factual background

2.1 The complainant worked as an economics teacher at higher education institutions in Côte d'Ivoire. He was a member of the Student Federation of Côte d'Ivoire and headed its branch in Abobo. He was also a member of, and politically active in, the Ivorian Popular Front. In March 2008, he started to work with Simone Gbagbo, wife of the former President of the country, Laurent Gbagbo. The complainant was coordinator for religious matters in Ms. Gbagbo's cabinet and his cooperation with her consisted of financing the construction of churches. He also encouraged churches to support Laurent Gbagbo. When the crisis that followed the presidential election of November 2010 began, the complainant was ordered to form a monitoring committee to investigate churches and mosques. The committee found

* Adopted by the Committee at its sixty-fourth session (23 July–10 August 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodriguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

[1] The complainant requested anonymity on 7 January 2015.

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weapons in the mosques, leading to attacks on those mosques. The complainant claims to have never borne arms, but he was involved in uncovering weapons caches.[2] The Gbagbos were imprisoned on 11 April 2011 in connection with the crisis that followed the presidential election of November 2010. Subsequently, the Ivorian authorities started to look for those who had worked with Simone Gbagbo.

2.2 The complainant's home was plundered and demolished on 12 April 2011 but he was not there at the time. Afterwards, he lived in hiding with his friends, while his wife and children lived with other friends. On 20 April 2011, when he was trying to flee to Ghana, the complainant was arrested by a militia, together with two friends in the town of Bonoua.[3] He had reportedly been recognized by one of the militiamen as someone who had worked with the churches. The complainant was then brought to a military camp in Abobo and detained there for a week.[4] He was accused of having received money and weapons from Ms. Gbagbo. The militiamen who had detained the complainant questioned him about his political activities, his cooperation with the wife of the former President and their relationship. Those who questioned him apparently knew about his cooperation with Ms. Gbagbo and wanted to know where all the weapons they had taken from the militia were hidden.[5] The complainant stated that he did not know anything about the weapons. The militiamen also demanded money from the complainant.

2.3 While being held in the military camp in Abobo, the complainant's wrists were tied with a metal strap and his left hand was tied to the roof. Every hour he was it with a baton and asked about the weapons by those who were questioning him. In total, there were some 10 men who took it in turns to beat him. He was also hit with a "weapon" to make him speak. On one occasion, one of the officers burnt the complainant's left hand with a cigarette to check whether that hand was tightly fixed. The complainant was getting weaker each day and was throwing up blood and at as times unconscious.[6]

2.4 On an unspecified date, the complainant's wife was informed about his condition and whereabouts. She met with one high-ranking officer and paid 500,000 CFA francs to secure the complainant's release. The complainant believes that his release was conditional and that he was released only because the militiamen who held him needed money that he was able to pay.[7] After his release, the complainant went into hiding at his godfather's house in Cocody, Abidjan, where he was treated for his wounds. He did not want to go to a hospital, as he was afraid.

2.5 On 18 January 2012, the complainant left for France, as he feared he would be arrested again owing to his political activities. While he was in France, the Government of Côte d'Ivoire issued a memorandum, stating that those who had fled the country could return without risking any harassment from the authorities. Consequently, on 2 February 2012, the complainant returned to Côte d'Ivoire, where his wife and children remained. He continued his political activities after his return and took part in political rallies in Abidjan. During his stay in Côte d'Ivoire, he was followed and armed men searched for him on at least two occasions without being able to find and arrest him.[8]

[2] This part of the factual background is based on the decision of the Stockholm Administrative Court (Migration Court) of 3 June 2014.

[3] According to the complainant, the militia who arrested him consisted of youths loyal to the incumbent President, Alassane Ouattara.

[4] According to the complainant, the military camp was under the command of the Forces républicaines de Côte d'Ivoire (FRCI).

[5] The complainant does not provide further details on the matter.

[6] The complainant submitted a copy of the medical record issued by Söderhamn Health Centre on 1 October 2013, according to which he had "severe symptoms of pain in the right hip and the whole right side up against the thorax due to mistreatment under arrest in 2011. He has difficulty using the right arm and has a constant pain in the chest. ... The injuries may well have [been] incurred because of the beating. He is significantly handicapped in his everyday life."

[7] The complainant does not provide further details on the matter.

[8] The complainant does not provide further details on the matter.

2.6 On an unspecified date, the complainant talked to the chief of police in Abidjan whom he knew. He was advised to leave Côte d'Ivoire if he did not want to be arrested, as he was still being sought for his past political activities.

2.7 On 12 April 2012, the complainant left for Sweden through Ghana.[9] He arrived in Sweden on 20 April 2012 and applied for asylum the same day at Arlanda airport.

2.8 After the complainant left Côte d'Ivoire, his wife was visited by "authority representatives" who were looking for him. They had wiretapped contacts between him and his wife.[10] On 21 August 2012, he was summoned to the police station in Abidjan on 22 August 2012. On an unspecified date, a poster with the complainant's photograph was displayed in police stations in Côte d'Ivoire. In November 2012, the complainant's wife was attacked by government forces in the area where they were living. On 3 September 2012, Italian television broadcast a documentary criticizing French involvement in the war in Côte d'Ivoire. The complainant appeared in that documentary, which was filmed in Côte d'Ivoire in January 2012, giving an interview in the street about economic issues in the country. Several of the participants in the documentary were reportedly arrested and accused of defaming the country.[11]

2.9 On 18 December 2013, the Swedish Migration Agency rejected the complainant's application and decided to expel him to Côte d'Ivoire. It concluded that the complainant had not plausibly demonstrated that he risked persecution constituting grounds for asylum, or treatment constituting grounds for protection if he returned to Côte d'Ivoire.[12] The decision of the Migration Agency was appealed to the Stockholm Administrative (Migration) Court, which held an oral hearing in the case on 20 May 2014 and rejected the appeal on 3 June 2014. On 10 September 2014, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final and non-appealable. The complainant subsequently claimed before the Migration Agency that there were impediments to enforcement of the decision to expel him and requested a re-examination of his case. The Migration Agency rejected his request on 19 November 2014.

2.10 The complainant submits that he has exhausted all available domestic remedies.

**The complaint**

3. The complainant claims that his deportation to Côte d'Ivoire would constitute a violation of article 3 of the Convention. He argues, in particular, that the militiamen who arrested him in 2011 were now in the army and that the current Ivorian authorities had accused the churches of caching weapons because they were supported by Laurent Gbagbo and his wife. There is therefore a substantial risk that the complainant will be arrested on political grounds and subjected to torture on his return to Côte d'Ivoire owing to the work he did involving the wife of the country's former President and his membership in the Ivorian Popular Front. The complainant adds that some of his political friends, who returned to Côte d'Ivoire from Ghana and other countries of asylum, have been arrested and that torture is still common among persons who have been arrested for political reasons.[13]

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[9] As transpires from the decision of the Migration Court of 3 June 2014, the complainant left Côte d'Ivoire on 10 April 2012. He first travelled to the Russian Federation, where he received help in obtaining a visa, but he only stayed in the Russian Federation for a few days and did not seek asylum there because he felt the country was "racist".

[10] The complainant does not provide further details on the matter.

[11] The complainant does not provide further details on the matter.

[12] The Migration Agency noted, inter alia, that after the complainant's release in 2011, he had stayed with his godfather in Abidjan for one year without any problems. In addition, in January 2012, he left Côte d'Ivoire via the airport in Abidjan and returned in February 2012 without provoking any reaction from the Ivorian authorities. Thereafter, he again left Côte d'Ivoire in April 2012 legally, using his own name, without attracting any attention. The Migration Agency also found that the complainant had not plausibly demonstrated that his detention in 2011 was carried out and sanctioned by the current regime, or that he was wanted by that regime, as claimed by him. There was therefore no reason to assume that he would be at risk of being arrested again and subjected to similar treatment to that he endured in 2011 on the grounds of his collaboration with Ms. Gbagbo.

[13] The complainant does not provide further details on the matter.

Last but not least, the complainant submits that the authorities in Côte d'Ivoire are still looking for him.

**State party's observations on admissibility and the merits**

4.1 By note verbale of 2 July 2015, the State party submitted its observations on admissibility and the merits. After explaining the applicable legislation and facts on which the present complaint is based, the State party submits that pursuant to paragraph 1, section 22, chapter 12, of the Aliens Act, the decision to expel the complainant will become statute-barred on 10 September 2018. That means, firstly, that the decision to expel him will no longer be enforceable after that date and that the complainant will then no longer be under any threat of expulsion. Secondly, a new application for asylum and a residence permit, and the reasons put forward in support thereof, will be re-examined in full and a negative decision by the Migration Agency will be subject to appeal to the Migration Court and the Migration Court of Appeal. The State party, therefore, urges the Committee to consider the admissibility and/or merits of the present complaint well ahead of 10 September 2018.

4.2 On admissibility, the State party submits that it is not aware of the present complaint having been, or being, subject to any other procedure of international investigation or settlement. The State party also does not contest that all available domestic remedies have been exhausted in the present case. Irrespective of the outcome of the Committee's examination of the issues relating to article 22 (5) (a) and (b) of the Convention, the State party submits that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to Côte d'Ivoire fails to rise to the minimum level of substantiation required for purposes of admissibility. Thus, the State party argues that the complaint is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.

4.3 As to the merits of the case, the State party submits that to constitute a breach of article 3 of the Convention, the following considerations are relevant: (a) the general human rights situation in Côte d'Ivoire and, in particular, (b) the personal risk of the complainant being subjected to torture, following his return to the country of origin.

4.4 In relation to the general human rights situation in Côte d'Ivoire, the State party recalls that Côte d'Ivoire is a party to the Convention[14] and to the International Covenant on Civil and Political Rights. It adds that, according to the United States of America Department of State report on human rights in Côte d'Ivoire, in August 2013, Ivoirian authorities provisionally released 14 pro-Gbagbo defendants, including Pascal Affi N'Guessan, Gbagbo's former spokesman and the former president of the Ivorian Popular Front.[15] The State party further submits that the current human rights situation in Côte d'Ivoire does not, in itself, suffice to establish that the general situation in the country is such that the complainant's expulsion would entail a violation of article 3 of the Convention. Hence, it contends that his expulsion to Côte d'Ivoire would only entail a breach of the Convention if he could show that he would be *personally*[16] at risk of being subjected to treatment contrary to article 3 of the Convention. The State party argues that the complainant has failed to substantiate his claims that he would run such a risk.

4.5 The State party submits that in the present case, the Migration Agency conducted two interviews with the complainant before refusing his asylum claim. The interviews were conducted in the presence of the complainant and an interpreter, whom the complainant confirmed that he understood well. During the asylum interview, which lasted for approximately 2 hours and 40 minutes, the complainant's legal counsel was also present. The legal counsel also asked the complainant questions during the interview and submitted

[14] Although Côte d'Ivoire acceded to the Convention on 18 December 1995, its compliance with the obligations under the Convention has not yet been examined by the Committee. A list of issues prior to the submission of the initial report of Côte d'Ivoire was adopted by the Committee at its fifty-ninth session (7 November–7 December 2016).

[15] United States Department of State, "Côte d'Ivoire 2013 human rights report", available at www.state.gov/documents/organization/220316.pdf.

[16] Emphasis added by the State party.

written observations and comments on the minutes from the interview. The purpose of the interviews was to allow the complainant to explain his case orally and to present all the facts that he considered to be of relevance to the assessment of his case by the authorities of the State party. Furthermore, on appeal, the Migration Court held an oral hearing, during which the complainant again was given the opportunity to explain in the presence of legal counsel and an interpreter his reasons for seeking asylum. The complainant has thus had several opportunities to explain relevant facts and circumstances in support of his claim and to argue his case, both orally and in writing, before the Migration Agency and the Migration Court. Against that background, the State party holds that the Migration Agency and the Migration Court had sufficient information, including the facts in the case, to ensure that they had a solid basis for conducting a well-informed, transparent and reasonable risk assessment of the complainant's need for protection in Sweden.

4.6 Since the Migration Agency and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice, the State party contends that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. Accordingly, it holds that great weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the complainant's expulsion to Côte d'Ivoire.

4.7 The State party submits that, like the Migration Agency and the Migration Court, it does not question that the complainant worked with Simone Gbagbo. Furthermore, and like the Migration Court, the State party does not question that the complainant was interviewed regarding economic matters in a documentary. As the Migration Court has noted, a "forward-looking" assessment of the risks the complainant would face if returned to Côte d'Ivoire has to be made.[17] In that respect, the State party shares the view of the Migration Court that there are credibility gaps in the complainant's initial asylum statement and in the subsequent domestic asylum proceedings.

4.8 Firstly, the State party notes that the complainant's account of having been followed and wiretapped in Côte d'Ivoire and subjected to two attempted kidnappings was not presented at the asylum investigation but at a later stage in the asylum proceedings. In that regard, the Migration Court in particular noted that the complainant, also at the oral hearing before the court, gave only a very general account of the two attempted kidnappings. The State party, like the Migration Court, considers this strange, particularly as, according to the complainant's own account, the attempted kidnappings were a contributing factor in his leaving Côte d'Ivoire. In the State party's view, the complainant could have been expected to have invoked this circumstance earlier in the asylum proceedings, given the nature of these alleged incidents. It recalls in that connection that the complainant was represented throughout the asylum proceedings by legal counsel, who could also have assisted him in that regard.

4.9 Furthermore, in accordance with the migration authorities and courts, the State party notes that the fact that the complainant did not apply for asylum in France or the Russian Federation also raises the question of whether his need for protection was as immediate as he now asserts (see para. 4.11 below).

4.10 Moreover, the State party notes that the complainant has submitted before the Committee a summons issued on 21 August 2012 by the police authorities in Abidjan and a poster with his photograph and a telephone number on it, in order to substantiate his claim that he is wanted by the Ivorian police authorities (see para. 2.8 above). In that regard, the State party notes that the summons is of a very simple nature and, therefore, of low

[17] A relevant excerpt from the decision of the Migration Agency dated 18 December 2013 reads as follows: "The ... Migration Agency does not question [the complainant's] claim that [he] worked with Simone Gbagbo as described, nor that [he was] detained by a militia in spring 2011. Nor does the Agency question [his] claim that [he was] subjected to the treatment [he has] recounted during the week [he was] detained. This took place during the highly turbulent period around and after the elections in Côte d'Ivoire in autumn 2010 and spring 2011. The question is whether [he] today, in a forward-looking assessment, would risk being subjected to persecution constituting grounds for asylum or treatment constituting grounds for protection if [he] returned to Côte d'Ivoire."

probative value. For example, the summons does not indicate what act or crime the complainant is suspected of. The complainant has not explained why he did not submit the said summons until after the decision of expulsion was final, i.e. after the decision of the Migration Court of Appeal. The summons was dated 21 August 2012 and the complainant did not submit it to the Migration Agency until 21 October 2014.

4.11 The State party submits that, in the present context, it is also of relevance to the assessment of the complainant's asylum account that he, despite those claims, was able to leave Côte d'Ivoire and travel to France[18] and the Russian Federation[19] and voluntarily returned to Côte d'Ivoire from France, without attracting the attention of the authorities. If, as the complainant suggests, the Ivorian authorities had an interest in him, which allegedly would involve a risk that he would be subjected to torture, it is questionable whether the authorities would have waited approximately four months to issue a summons for an interrogation, particularly as he was allegedly summoned as a suspect. In the light of that, the State party submits that the document claimed to be a summons cannot be accorded any evidentiary value in relation to the complainant's claim that he risks being subjected to torture upon return to Côte d'Ivoire. Consequently, the State party is of the view that the complainant has not made his alleged need of protection probable by the submission of these documents.

4.12 The State party draws the Committee's attention to the fact that the complainant's national passport, submitted by him to the Swedish Migration Agency, was issued on 30 December 2011 by the Sous-direction de la police de l'air et des frontières (the air and border police authority) of Côte d'Ivoire. In that regard, the State party finds it remarkable that the complainant managed to successfully apply for and collect his national passport during the time he was allegedly in hiding between April and December 2011. Hence, it holds that this circumstance strongly speaks against the complainant's alleged urgent threat from the Ivorian authorities.

4.13 As regards the complainant's alleged political activities, the State party, like the Migration Court, notes that the complainant has not been politically engaged at any particularly high level. Nor has he had any particular standing within the Ivorian Popular Front that was previously in power in Côte d'Ivoire. In the State party's view, such circumstances are also of relevance to the assessment of the potential risks facing the complainant upon return.

4.14 In addition, the State party notes that there are discrepancies in the complainant's asylum account. In the interview before the Migration Agency on 4 May 2012, the complainant stated that his parents had paid for his release. However, during the asylum interview of 12 June 2012 and before the Committee, the complainant stated that he had been released after his wife had paid an amount of money to the militia that had arrested him. It is the State party's view that the complainant's information about who got him released must be considered an important part of his asylum account and not only a detail. Furthermore, the different accounts given by the complainant concerning who paid for his release were given only one month apart. The State party therefore submits that this discrepancy negatively affects the credibility of the complainant's asylum account.

4.15 In the light of the foregoing, the State party finds that there are reasons to question the veracity of the complainant's account of his alleged need for protection. In that regard, it notes in particular the complainant's legal travel to France and the Russian Federation, where he chose not to apply for asylum, his ability to procure a national passport when he claims to have been in hiding and the discrepancy concerning who paid for his release. According to the State party, the documentary evidence and the circumstances invoked do not show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Accordingly, under the present circumstances, enforcement of the expulsion order would not constitute a violation of article 3 of the Convention. Furthermore, since the State party finds that the complainant's claim under article 3 fails to attain the basic level of

[18] In January and February 2012.

[19] The date of entry into the Russian Federation was 17 April 2012.

substantiation, the communication should be declared inadmissible as being manifestly unfounded.

**Complainant's comments on the State party's observations**

5.1 On 27 January 2016, the complainant provided his comments on the State party's observations. He considers that the State party has failed to demonstrate that his complaint is manifestly unfounded. On the contrary, the facts on which the present complaint is based show that he is personally at risk of being subjected to torture if returned to Côte d'Ivoire owing to his political activities in that country prior to his departure. The fact that the complainant was able to travel to different countries before he left Côte d'Ivoire for the last time does not exclude the risk that he is in danger of being tortured on return.

5.2 As to the State party's assertion that he did not present until a later stage the account of attempted kidnappings and having been followed (see para. 4.8 above), the complainant submits that the initial interview at the Migration Agency lacked adequate translation and, therefore, the legal counsel representing him at that stage of the asylum proceedings had to correct the minutes of the interview afterwards. The complainant argues that at the Migration Court, he explicitly provided the details about those specific claims. He submits that, in his view, the decisions taken on his asylum application by the Migration Agency and the Migration Court were clearly arbitrary and denied him a fair and correct assessment.

5.3 With regard to the State party's argument that evidence submitted by the complainant is of a very simple nature and, therefore, of low value (see para. 4.10 above), he states that he cannot submit any other material than what he has been able to receive from Côte d'Ivoire. The complainant adds that he cannot tamper with evidence to make it more "complicated" and thus satisfactory for the State party's authorities. As to the fact that the summons was not submitted to the Migration Agency until a later stage, the complainant submits that, for a long time, none of his contacts in Côte d'Ivoire was willing to take the risk of getting the summons for him.

5.4 The complainant recalls that the State party questions his credibility, because he did not present all his reasons for seeking asylum early enough in the process before the Migration Agency (see para. 4.5 above). He argues in that regard that he presented all the information that he himself found relevant to his claim to be accepted as a refugee in Sweden. He never tried to hide any information from the Migration Agency.

5.5 Regarding the fact that he travelled to France and the Russian Federation and then returned to Côte d'Ivoire without being arrested (see paras. 4.9 and 4.11 above), the complainant submits that at that time, the current Ivorian authorities had established the Dialogue, Truth and Reconciliation Commission aimed at resolving problems in the country. He recalls that shortly after his return to Côte d'Ivoire, he began to be followed and avoided two kidnapping attempts. The complainant adds that many of his friends and colleagues were arrested and are still being held in indefinite detention.[20]

5.6 As to the fact that he managed to receive a national passport during the time he was allegedly in hiding (see para. 4.12 above), the complainant states that during the time of his hiding, which lasted several months, the current Ivorian authorities, who wanted the opposition to participate in the legislative elections, suspended the arrests of opposition activists for a short period of time. It was during that period that the complainant was able to apply for and collect his national passport.

5.7 With regard to the State party's assertion that the complainant has not been politically engaged at any particularly high level (see para. 4.13 above), he argues that Ivorian prisons are full of political prisoners who have never been in high political positions. The complainant recalls in that context that neither the Migration Agency nor the Migration Court questioned the fact that he worked for Ms. Gbagbo.

5.8 As to the State party's argument that there are discrepancies in his asylum account regarding who paid for his release (see para. 4.15 above), the complainant acknowledges that there could have been a misunderstanding regarding the circumstances and submits that

[20] The complainant does not provide further details on the matter.

the payment for his release was the contribution of the entire family that was "deposited to the authorities" by his wife.

5.9 To conclude, the complainant submits that some of the arguments put forward by the State party demonstrate a very narrow way of looking at the facts on which the present complaint is based. Namely, the State party and, previously, the Migration Agency and the Migration Court, seem to evaluate the facts from a very Swedish perspective and not from the more relevant one, i.e. the situation in the complainant's country of origin.

**State party's additional observations**

6. By note verbale of 28 March 2018, the State party noted that the complainant's comments did not include any new submissions in substance which had not already essentially been covered by the State party's observations of 2 July 2015, and emphasized that it fully maintained its position regarding the admissibility and merits of the present complaint. The State party also recalls that the decision to expel the complainant will become statute-barred on 10 September 2018 (see para. 4.1 above) and urges the Committee to consider the admissibility and/or merits of the present complaint well ahead of that cut-off date.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

7.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies.[21] The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The State party maintains that the complaint should be declared inadmissible, pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure, as it is manifestly unfounded. The Committee, however, considers that the complaint has been sufficiently substantiated for purposes of admissibility, because the complainant's allegations of a risk of torture or ill-treatment in case of his forced removal to Côte d'Ivoire raise issues under article 3 of the Convention. As the Committee finds no further obstacles to admissibility, it declares the complaint admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

8.2 In the present case, the issue before the Committee is whether the return of the complainant to Côte d'Ivoire would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Côte d'Ivoire. In assessing this risk, the Committee must take into account all relevant considerations pursuant to article 3 (2) of the Convention, including the existence

[21] See, for example, *X.Q.L. v. Australia* (CAT/C/5[illegible]455/2011), para. 8.2.

of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[22]

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination. The Committee's practice in that context has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real" (see general comment No. 4, para. 11). Indications of personal risk may include, but are not limited to: political affiliation or political activities of the complainant; previous torture; incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and clandestine escape from the country of origin following threats of torture (see para. 45). The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (see para. 50).

8.5 In assessing the risk of torture in the present complaint, the Committee notes the complainant's contention that he fears being arrested on political grounds and subjected to torture upon return to Côte d'Ivoire owing to his membership of the Ivorian Popular Front, which was previously in power in Côte d'Ivoire, and the work he did involving the wife of the country's former President. In particular, in his capacity of coordinator for religious matters in Ms. Gbagbo's cabinet, when the crisis that followed the presidential election of November 2010 began, the complainant was ordered to form a monitoring committee to investigate churches and mosques, which found weapons in the mosques, leading to attacks on those mosques. The Committee also notes the complainant's claim that, owing to the aforementioned political activities, he was arrested on 20 April 2011 by a militia loyal to the current Ivorian authorities, detained for a week at the military camp in Abobo, where he was subjected to torture, and conditionally released upon payment of a bribe to the militiamen who held him in captivity. The Committee further notes the complainant's assertion that he appeared in a documentary, which was filmed in Côte d'Ivoire in January 2012, giving an interview in the street about economic issues in the country, and that, subsequently, several of the participants in the documentary were arrested and accused of defaming the country. The Committee equally notes the complainant's statement that, shortly after his return to Côte d'Ivoire from France in February 2012, he was followed, wiretapped and subjected to two attempted kidnappings and that the Ivorian authorities were still looking for him after his departure from the country in April 2012. Last but not least, the Committee notes the complainant's argument that some of his political friends, who had returned to Côte d'Ivoire from Ghana and other countries of asylum, have been arrested and that torture is still common among persons who have been arrested for political reasons.

8.6 The Committee notes in this context that the State party does not question that the complainant worked with Ms. Gbagbo and that the State party's asylum authorities equally did not question that he was detained by a militia in spring 2011 for a week and subjected to the ill-treatment described by him while in detention (see para. 4.7 above). The

[22] See *T.M. v. Republic of Korea* (CAT/C/53/D/519/2012), para. 9.3; and *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.3.

Committee also notes the State party's observation that an assessment of the potential risks the complainant would face if presently returned to Côte d'Ivoire has to be made and that the following factors are of relevance to that assessment: (a) he has not been politically engaged at any particularly high level nor has he had any particular standing within the Ivorian Popular Front; and (b) there are credibility gaps in the complainant's initial asylum statement and in the subsequent domestic asylum proceedings that give reasons to question the veracity of his account of the alleged need for protection. The complainant, inter alia, (a) was able to leave Côte d'Ivoire and travel to France and the Russian Federation, and voluntarily returned to his home country from France, without attracting the attention of the Ivorian authorities; (b) was able to successfully apply for and collect his national passport during the time he was allegedly in hiding; (c) presented evidence of a very simple nature and, therefore, of low probative value, in support of his claim that the Ivorian authorities were still looking for him after his departure from Côte d'Ivoire in April 2012; (d) provided inconsistent information regarding who paid for his release in the spring of 2011; and (e) did not present until a later stage of the asylum proceedings the account of having been followed and wiretapped in Côte d'Ivoire, and subjected to two attempted kidnappings shortly after his return from France in February 2012.

8.7 The Committee recalls that it must ascertain whether the complainant currently runs a risk of being subjected to torture if he were returned to Côte d'Ivoire.[23] The Committee notes that the complainant has had ample opportunity to provide supporting evidence and more details about his claims at the national level to the Migration Agency, the Migration Court and the Migration Court of Appeal, but that the documentary evidence and the circumstances invoked have not allowed the national asylum authorities to conclude that he has sufficiently shown that the alleged risk of torture if he returned to Côte d'Ivoire fulfilled the requirement of being foreseeable, real and personal. The Committee further observes that, even if it were to set aside the inconsistencies in the complainant's account of his past experiences in Côte d'Ivoire and accept his statements as true, the complainant has not provided any evidence that the Ivorian authorities have been looking for him in the recent past, or were otherwise interested in him beyond the immediate aftermath of the highly turbulent period around and after the elections in Côte d'Ivoire in autumn 2010 and spring 2011. The Committee notes that there are reports of serious human rights violations, including the use of torture, in Côte d'Ivoire, which is a party to the present Convention, and that, according to information in the public domain, around 200 supporters of Laurent Gbagbo, arrested since 2011 for crimes allegedly committed during the post-electoral violence, are still detained awaiting trial.[24] However, the Committee considers that, even if it were assumed that the complainant was tortured by or with the acquiescence of the Ivorian authorities in the past, it does not automatically follow that he would still be at risk of being subjected to torture if returned to Côte d'Ivoire at present. It recalls in this connection that ill-treatment suffered in the past is only one element to be taken into account by the Committee, because, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned.

8.8 The Committee further recalls that the burden of proof is upon the author of the complaint, who has to present an arguable case, i.e. submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real, unless the complainant is in a situation where he or she cannot elaborate on his or her case.[25] In the light of the above considerations and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in Côte d'Ivoire, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that his return to Côte d'Ivoire at present would expose him to a foreseeable, real and personal risk of torture,

[23] See, for example, *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

[24] See, for example, United States Department of State, "Côte d'Ivoire 2017 human rights report", available at www.state.gov/documents/organization/277235.pdf; and *Amnesty International Report 2017/18. The State of the World's Human Rights*, available from www.amnesty.org/en/countries/africa/cote-d-ivoire/report-cote-divoire/.

[25] See general comment No. 4, para. 38.

as required under article 3 of the Convention. Moreover, his claims do not establish that the evaluation of his asylum application by the Swedish authorities failed to comply with the standards of review required by the Convention.

9. Accordingly, the Committee, acting under article 22 (7) of the Convention, is of the view that the return of the complainant to Côte d'Ivoire would not constitute a violation of article 3 of the Convention.